IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

AND
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 882 of 2005

Between:

M/s. Hi-Tech Liners, Edupugallu, Panchayat Office Road, Ganguru 521144, Kankipadu Mandal, Krishna District, rep. by its Proprietor M.Murali Krishna, S/o.Venkateshwarlu, aged about 38 years, R/o.Poranki Village, Vijayawada Rural, Krishna District.

..... PETITIONER

AND

1. The Addl.Commissioner (CT) Legal (FAC),

O/o:The Commissioner of Commercial Taxes,
Andhra Pradesh, Hyderabad.

2. The Commercial Tax Officer, Vuyyuru, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more in the nature of writ of Mandamus declaring the Assessment Order with Assessment No. 3173/98-99 (CST) dated 15.03.2004 which was served belatedly after 75 days i.e. on 01-06-2002 to the petitioner demanding to pay Rs.1,44,354-00 by imposing penal tax of 10% instead of 4% and declare the same as illegal, arbitrary, belated, against the principles of natural justice and violative of Articles 14 and 16 of the Constitution of India consequently set-aside the same.

Counsel for the Petitioner: MR.ANGURU.NARAYANA RAO

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court at the admission stage made the following :

WRIT PETITION NO.882 OF 2005

O R D E R

(Per Sri Justice M.H.S.Ansari)

Instant writ petition is filed for setting aside the assessment order dated 15.03.2004. We find from paragraph-8 of the affidavit, filed in support of the above writ petition, that petitioner has filed an appeal before the Sales Tax Appellate Tribunal and the reason giving cause to file the instant writ petition appears to be that the respondents are forcing the petitioner to pay the disputed tax even during the pendency of the said appeal. It is averred that respondents are threatening to stop all the industrial activities by way of freezing the bank account.

As per the petitioner's own showing, the assessment order impugned in the instant writ petition is subject matter of an appeal before the Sales Tax Appellate Tribunal. We are of the view that instant writ petition is not maintainable and is accordingly dismissed at the admission stage.

Before parting with the case, we must also state that learned counsel submitted that the grievance is with regard to recovery proceedings, and therefore, the recovery of the disputed tax, pending disposal of the appeal, may be stayed by this Court in the instant writ petition.

As to this contention, we leave it open to the petitioner to approach the authorities for stay of collection, pending disposal of the appeal, and if aggrieved thereby, it is open to the petitioner to avail of such remedy open to him in law. This question is accordingly left open.

JUSTICE M.H.S.ANSARI

JUSTICE T.CH.SURYA RAO

4th FEBRUARY, 2005

Note: Issue Order copy on priority basis.

{B/O)PGS

To

1. The Addl.Commissioner (CT) Legal (FAC),

O/o:The Commissioner of Commercial Taxes,
Andhra Pradesh, Hyderabad.

2. The Commercial Tax Officer, Vuyyuru, Krishna District.

3. Two CCs to G.P. for Commercial Taxes, High Court of A.P.,

Hyderabad (OUT).

4. Two CD copies.

THE HONOURABLE SRI JUSTICE

M.H.S.ANSARI

AND

THE HONOURABLE SRI JUSTICE

T.CH.SURYA RAO

WRIT PETITION NO.882 OF 2005

(Per Sri Justice M.H.S.Ansari)

4th FEBRUARY, 2005